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Filed 21 June 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MICHAEL K. STERN and DANIELA SALVEMINI,

Junior Party
(Reissue Application 09/930,433),

v.

IRWIN FRIDOVICH and STEFAN I. LIOCHEV,

Senior Party
(Patent 6,103,714).

Patent Interference 105,388
Technology Center 1600

Before: McKELVEY, Senior Administrative Patent Judge, and
SCHAFER and MOORE, Administrative Patent Judges.

McKELVEY, Senior Administrative Patent Judge.

JUDGMENT

A. Introduction

1. The interference was "provisionally" declared between (1) Fridovich U.S. Patent 6,103,714 and (2) Stern application 09/930,433.

2. The Stern application seeks to reissue Stern U.S. Patent 6,245,758.

1 3. At the time the interference was declared, a
2 maintenance fee due on the Stern U.S. Patent sought to be
3 reissued had not been timely paid.

4 4. The "provisional" nature of the interference was
5 based on the fact that the Stern reissue application "involved"
6 in the interference sought to reissue a patent which had expired
7 and hence the reissue application might not be able to be
8 regarded as a pending application within the meaning of 35 U.S.C.
9 § 135(a).

10 5. During the course of the interference, Stern was
11 authorized to file a miscellaneous motion seeking to have the PTO
12 accept a late payment of the maintenance fee.

13 6. Stern timely filed the miscellaneous motion and it
14 has been granted.

15 7. Upon the granting of the miscellaneous motion the
16 reissue application can be regarded as a "pending" application.

17 8. Since the reissue application is "pending", the
18 "provisional" nature of the interference was removed.

19 9. Stern now indicates that it "abandons" the reissue
20 application and requests entry of an adverse judgment.

21 10. Stern's request for entry of an adverse judgment
22 is granted.

23 **B. Order**

24 Upon consideration of a paper styled STERN EXPRESS
25 ABANDONMENT AND CONCESSION OF PRIORITY OF REISSUE APPLICATION
26 09/930,433, it is

1 ORDERED that judgment on priority as to Count 1 (the
2 sole count in the interference; Paper 1, page 6) is awarded
3 against junior party MICHAEL K. STERN and DANIELA SALVEMINI.

4 FURTHER ORDERED that junior party MICHAEL K. STERN and
5 DANIELA SALVEMINI is not entitled to a patent containing claims
6 23-33 (corresponding to Count 1) of reissue application
7 09/930,433, filed 15 August 2001.

8 FURTHER ORDERED that if there is a settlement agreement
9 in addition to that already submitted (Paper 37), attention is
10 directed to 35 U.S.C. § 135(c).

11 FURTHER ORDERED that a copy of this JUDGMENT shall
12 be placed in the files of (1) reissue application 09/930,433,
13 filed 15 August 2001, (2) U.S. Patent 6,245,758 B1 and
14 (3) U.S. Patent 6,103,714.

15 FURTHER ORDERED that the Clerk is directed to
16 distribute the files upon entry of this JUDGMENT.

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18
19 /ss/ Fred E. McKelvey)
20 FRED E. MCKELVEY, Senior)
21 Administrative Patent Judge)

22)
23)
24 /ss/ Richard E. Schafer)
25 RICHARD E. SCHAFER)
26 Administrative Patent Judge)

BOARD OF PATENT
APPEALS AND
INTERFERENCES

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105388.040.pdf